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Power struggles, regulation and responsibility. Reappraising the Video Recordings Act

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Abstract:

This article explores the relationship between BBFC and government during the implementation of the Video Recordings Act. It considers the public Parliamentary debates about the VRA, and places them alongside private correspondence between the Home Office and the BBFC, and internal BBFC material from the recently catalogued James Ferman papers held at the BFI.

As well as exploring the introduction of the VRA, this article also aims to briefly consider its implications for the BBFC, how they set about interpreting and implementing its stringent recommendations and how this impacted upon the organisational working practices of the Board. While the Video Recordings Act was without doubt one of the most significant pieces of legislation within the history of film regulation in Britain, the time is ripe for its reappraisal and with it a re-evaluation of the role played by the BBFC in securing statutory regulatory powers.

Keywords:

British Board of Film Classification, Video Recordings Act, Video Nasties, Film Censorship, Britain

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Power struggles, regulation and responsibility: reappraising the Video Recordings Act

Introduction

Throughout the history of British film censorship, little is as significant as the introduction and implementation of the Video Recordings Act (VRA) in 1984.¹ This act gave the British Board of Film Censors statutory powers to regulate a visual form for the first time but also signalled greater government intervention, and created a system of stricter censorship for video than for film destined for the cinema.

As contemporary accounts by Martin Barker and Julian Petley suggested, the reasons for the introduction of this government intervention was the media panic created around the so-called video nasties by the British tabloid press and social campaigners who targeted horror videos for their potentially damaging influence. Writing in 1984, Barker declared that the Video Recordings Bill ‘holds out real threats of practical censorship – disguised, of course, as moral protection’² The perceived need to regulate the new medium of video was a crucial part of industry and public debate from the start of the 1980s, yet a combination of different factors ensured that the Video Recordings Act became law, the BBFC became the organisation with statutory responsibility for video and the British Government took a much more active role in regulation of moving image. While the VRA ensured that the BBFC were

given government-sanctioned power, it also allowed for a continuation of the carefully construction illusion that the Board was largely an independent body.

Considering the introduction of this game-changing legislation from a distance of over 30 years, a few issues appear anomalous. Firstly, how did the BBFC become the overseers of video? The technology of video was different from that of film for the cinema and there was also a high level of distrust of the organisation at government level. Secondly, how were the negotiations between the BBFC and the government handled and what do they suggest about the power balance between the Home Office, and the Board at this time? Thirdly, what can the Parliamentary debates reveal about the government's desire to regulate video? Annette Kuhn suggested that the VRA secured an 'easy passage through Parliament on the back of the nasties scare' and while this might have been the case, a thorough perusal of the Commons and Lords debates around the proposed legislation is indicative of a broader range of attitudes and discourse on this topic.³ Additionally an analysis of the progress of this Private Members Bill reveals the effectiveness of the tactics employed by various stakeholders to ensure the legislation became law. Exploring these debates in detail, and with the added benefit of hindsight, helps to explain how and why the Home Office intervened to position the BBFC as the appropriate organisation to handle video regulation, elevating the organisation and creating British state-sanctioned censorship of moving image.

The purpose of this article is not to cover old ground around the video nasties controversy, but rather to look at the relationship between BBFC and government at this crucial time. It will pay particular attention to the parliamentary debates about the VRA, and place this alongside correspondence between the Home Office and the BBFC and internal BBFC material from the recently catalogued James Ferman papers held at the BFI. This internal BBFC material was not available at the time of the Bill's passage through Parliament and it can be used to offer new insights to the public and private machinations taking place.

As well as exploring the introduction of the VRA, this article also aims to briefly consider its implications for the BBFC, how they set about interpreting and implementing the legislation and how this impacted upon the organisational working practices of the Board. While the Video Recordings Act was without doubt one of the most significant pieces of legislation within the history of film regulation in Britain, the time is ripe for its reappraisal and a re-evaluation of the role played by the BBFC.

The Home Office and the BBFC

Relations between the Home Office and the BBFC are characterised by periods of harmony, interspersed with outbreaks of hostility and suspicion. The years leading up to the VRA legislation were no exception. The findings of the Williams Committee were published in 1979 and posited a number of strong arguments against censorship of the arts, except for cinema, where it called for statutory censorship. It noted the anomalous position of the BBFC observing 'its having been taken for granted for so long obscures the fact that it is undeniably odd.'⁴ The committee drew attention to the fact that the BBFC held no statutory powers and their certificates were advisory and could not be enforced by law. Funded by submission fees

charged to film distributors and not by government, the Board was intended to be an independent organisation, yet was ultimately answerable to the wider film industry and, more opaquely, to the Home Office. The Williams report concluded that ‘the time had come to remove the anomalies inherent in the system and to establish censorship on a more rational and deliberate footing.’⁵ The committee recommended a statutory body to replace the BBFC and suggested that the existing board be reconfigured as an appeals body rather than as a classification organisation. It also suggested that a statutory body would ensure that fewer decisions on film censorship were taken by local authorities.

While the recommendations of the Williams Committee were not acted upon, and the proposed new statutory body did not materialise, the BBFC were in a precarious position at the end of the 1970s. Identified as a legal anomaly and facing growing calls for increased censorship from the state, the Board would undoubtedly have been anxious about their future and how they fitted into Thatcher’s Britain.

James Robertson has suggested that James Ferman was ‘temperamentally averse to increased central government power,’ yet the changes taking place in the period allowed Ferman unprecedented opportunities to position the BBFC as the single authority with the power for regulating film and video within Britain.⁶ Following the inclusion of film under the auspices of the Obscene Publications Act (OPA) in 1977, a change which Ferman actively campaigned for, the BBFC were on much firmer legal ground when it came to defending their decisions. This change effectively ended private prosecutions of the BBFC by ensuring all formal protests were channelled through the Director of Public Prosecutions. While private prosecutions of the BBFC for their classification of particular films had been rare and were largely unsuccessful, they drew unwanted attention to the Board and any legal defence required time and energy. The extension of the OPA and the improved legal position of the BBFC was to be consolidated further with the statutory powers granted by the VRA a few years later.

The anxieties felt by the BBFC in these years can be seen in the defensive nature of much of the correspondence between the BBFC and the Home Office minister David Mellor. A trained barrister, Mellor was at the Thatcher-government home office from 1983-1987 and was crucial in overseeing the development and implementation of the Video Recordings Act. Relations between the BBFC and the Home Office were strained following the untimely death in January 1985 of the BBFC president Lord Harlech. Responsible for overseeing the activities of the Board and general PR role, Harlech had been in post for over 20 years and as a member of the House of Lords was well-liked and trusted by those within the government and film industry. A champion of avant-garde cinema and of British film, Harlech had passionately defended Ken Russell’s *The Devils* (1971) on the grounds of its artistic merit, and had agreed to allow the nudity in Lindsay Anderson’s *If...* (1968). He had also been supportive of the decisions made by John Trevelyan and Stephen Murphy in their efforts to allow more adult material to be passed without cuts and supported Ferman’s decisions to allow material in the late 1970s to be passed uncut, including Derek Jarman’s *Sebastiane* (1976) and *The Long Good Friday* (1980). After many years in charge of the BBFC he was

skilled in anticipating public responses to particular films; he did not find *Life of Brian* (1979) blasphemous but thought that others might, so he called in the BBFC's lawyers. He agreed to the rejection of *The Wife Swappers* in 1969, on the grounds that it was exploitative, much to the dismay of its producer Stanley Long, and also supported Murphy in his ruling that scenes in Michael Winner's *Scorpio* (1973) could be 'dangerous' for teenagers.⁷

Harlech was intending to step down in 1985 or 1986 and discussions were already underway within the film industry and within the BBFC about his successor. However, his death expedited this process and exposed the fault lines which existed between the BBFC and the Home Office. The difference of opinions between David Mellor, acting on behalf of the Home Office and between James Ferman and the rest of the film industry in the appointment of Harlech's successor has been thoroughly covered by James Robertson in his exploration of the friction between the BBFC and Government throughout the 1980s and 1990s.⁸ He draws attention not only to the appointment of Lord Harewood in 1985 but also of Andreas Whittam Smith in 1997. While this political wrangling demonstrates the uneasy relationship between the Government and the BBFC, it is also important to think about the timing of the disintegrating relationship between the BBFC and government.

Regulating video

At the start of the 1980s, it was becoming apparent that the video industry would need to be regulated. With Harlech's death the Home Office saw an opportunity to put one of their own in post at the Board, and to simultaneously oversee the regulation of video. However, the regulation of video was not as straightforward as it first appeared.

Back in February 1981, Michael Havers, the Attorney General had written to Harlech:

You mention the possibility of legislation to deal with bogus cinema clubs and the video tape market in hardcore porn. I think it would be premature to discuss this with Willie Whitelaw until I have a better idea of what form your proposals would take. I suggest that the first step would be for us to meet with Jim Ferman and someone from the DPP's office to talk about the problems and consider what you have to say about possible solutions.⁹

There is evidence here of a familiarity between Conservative Peer and Attorney General Michael Havers (1979-1987) and Lord Harlech. At this point in time, and between these two, relations are clearly not strained. Certainly this correspondence suggests that at this moment, the relatively new Thatcher government was keen for the BBFC to spearhead the process of video regulation, though at this point the concern is about hardcore pornography not horror videos.

However timing was a crucial issue. In the intervening period between these preliminary discussions in 1981 and the introduction of Graham Bright's Private Members Bill in 1983, several films hit the headlines which threw the whole issue onto the front pages of the newspapers. As Kate Egan's work on the 'video nasties' has shown, it was less that

plummeting standards of morality had prompted a wave of extreme material to emerge in Britain, but rather that a number of post-1950s horror films and films with extreme content and shock appeal were released on video and came to the attention of the predominantly right wing press and moral campaigners.¹⁰ As Petley identified at the time of the hysterical debates about these films, even to position the films as a coherent genre or set of films was misleading. Not all of the films considered 'nasties' and carelessly lumped together on a list produced by the Director of Public Prosecutions were horror films and their content ranged from standard horror fare to more extreme content including simulated cannibalism, rape and necrophilia. The DPP list was also an incoherent muddle of material submitted and classified by the BBFC alongside films which had never been submitted and were unlikely to ever secure a certificate. Petley cites *Don't Answer the Phone!* (1980) as an example of a film which had received an X from the BBFC while *S.S. Experiment Camp* had never been submitted to the BBFC.¹¹ In trying to address these inconsistencies in 1984, Petley explained that 'a video nasty is not, apparently, a video of a film too violent to be given an X. As the saga progressed, the term 'video nasty' became synonymous with the term 'horror film'.¹²

Egan argues that a carefully orchestrated campaign against these horror titles by the right wing press and vocal moral campaigners pressurised the Thatcher government to implement legal restrictions on videos with sexual and violent content and to require that all videos be submitted to the BBFC for classification.¹³ A tougher stance on this extreme material, coupled with concerns about video as a medium meant that many of the titles from the DPP's video nasties list could potentially be prosecuted under the Obscene Publications Act.

While the Government moved to legislate on the video nasties, the BBFC were also dealing with a number of other issues. As well as grappling with the implications of video, in the early years of the 1980s the Board were also amending their category system to introduce age specific ratings for the first time, and making the shift from Board of Film Censors to Board of Film Classification. The furore around the video nasties ensured that the BBFC became the target of increased scrutiny at a moment when they were pioneering new ways of working and addressing the challenges posed by a new technology.

In 1982 the British Videogram Association (BVA), an industry body formed in 1980 which represented video distributors set up a working group led by the BBFC, to discuss how their new industry should be regulated and how the system of classification in place for film could be applied to video. This effectively indicates that the BBFC and the Video industry were allies at this point, and not warring factions. As Petley noted in 1984, this group were working to create an industry classification code to be administered by the Videogram Standards Council and compulsory for all BVA members.¹⁴ The lengthy report produced by the BVA immediately prior to the publication of their classification code provides a fascinating insight into the new industry but also indicates how broader issues of consumption and personal choice were being discussed in early 1980s Britain. As well as BBFC and BVA representatives, the working party also comprised 'experts in the fields of broadcasting, psychology and the law' and its stated ambition was:

[...] to offer guidance on the degree of protection needed for children as well as the kinds of advice which would be given to parents both as customers and as owners of a video recorder.’¹⁵

Crucially here, the focus is on the owners of the video recorders. There is relatively little discussion about the responsibility of society but rather on the family and the individual. This is perhaps unsurprising when situating these debates within the broader framework of a neo-liberal Thatcherite agenda, but it is at odds with the growing calls for greater social and legislative controls. It also contrasts with the position taken by the BBFC in regulating films for the cinema. For many years the BBFC had worked with the film industry in ensuring standards for film exhibition in Britain, issued its recommended categories and allowed interpretation of these categories by local authorities. In an interview in 1982, Ferman discussed the recent recommendations put forward by the Williams committee for film and clarified the BBFC’s position. He stated:

We want to apply the law, we don't want to be the law. Williams wanted to turn us into a statutory authority and give us absolute dictatorial powers, with no second guessing from the local authorities. We said to them that the flexibility and inefficiency of the local authority option was healthy in a democracy [...] you must have a system which is healthy in a democracy.¹⁶

Using local authority power as a means of checks and balances may have been a workable option for films exhibited in the cinema, but how could this work with a product purchased and viewed within the private not the public space? Would local councils be able to restrict the availability of particular videos in certain geographical areas? The BVA report anticipates this problem and continues:

Of all the media of screen entertainment, video is the one which permits the greatest degree of private and deliberate choice. A videogram is a physical entity obtained from a shop much like a bookshop and selected from a wide choice of available material. It is carried home privately by the consumer to be viewed in private whenever and in whatever circumstances he chooses. There is no common carrier as there is in broadcasting or even in the narrowcasting of cable TV; nor is there the shared theatrical experience of a cinema.¹⁷

The BVA report continues to liken the experience of watching a video to reading, by focusing on the new media as a domestic form. It notes:

The new domestic media could make such audience supervision a thing of the past, and the ability of children to view such material in their own sitting rooms or in those of their friends may create problems both for parents, and in times, for society at large.¹⁸

The report seeks to highlight the responsibilities of parents to personally control visual material within the home, but also argues that responsibility for formal video regulation should not be imposed by an external organisation but rather the video industry should regulate itself. In such a way, the BVA report is adopting the early BBFC as a model and echoes the suggestions made by the fledgling film industry back in 1912 to actively police itself rather than accept government-mandated censorship. The BVA report concludes:

Many organizations and agencies of government, central and local, have expressed an interest in seeing some system of regulation devised for the video industry. In addressing the alternatives we quickly realized that no system, not even a statutory one could be fool-proof ... however, the video industry is aware that its growing importance in the world order entails a certain effort at putting its own house in order.¹⁹

This report illustrates how the new video industry accepted that regulation was inevitable but were understandably keen to have substantial input into how such regulation evolved and how the process would be controlled. This may have been the understanding in January 1983 when the report was written and in April when the classification guidelines were published but Parliament became formally involved in this debate when Conservative MP Graham Bright introduced a Private Member's Bill in November of the same year, which detailed how Government would regulate the video industry. As Petley illustrates, while this was not the first bill introduced to try and regulate the video industry, Bright's bill became hugely significant as it gathered all-party and government support.²⁰ Crucially, while it is tempting to position the Bill as a Conservative-driven piece of legislation, the twin issues of censorship and regulation crossed party lines and attracted support from across the political spectrum.

Preparing for legislation

The Video Recordings Act has conventionally been seen as a swift response to the Video Nasties of the early 1980s, and Bright's move to create legislation in this area should of course be seen in this context. Bright's motion received the backing of the Conservative Administration, was championed by the Home Office, and moved swiftly closer to becoming law, while the broader issue of the regulation of the video industry became a Thatcher Government objective and a 1983 general election pledge. The serious consideration of legislation to regulate video in Britain rendered the classification system proposed by the trade obsolete. It would no longer be up to the trade to regulate itself but rather formal legislation would ensure that standards of content were met.

In the years following the passing of the Act, the legislation came under increased scrutiny by legal scholars who were perplexed both by the Act itself and the way that the Private Members Bill was propelled through Parliament. In their analysis from 1986, Marsh, Gowin and Read note a number of anomalies. Firstly, they observed that although the Bill was neither narrow nor uncontroversial (in fact, quite the opposite) and despite some opposition at report stage, there was no vote taken on the bill on its second or third reading; an indication, they suggest, that nobody within Parliament opposed the *principle* of the bill.²¹ Secondly, this

is even more surprising when considering that the VRA advocated censorship of material on the grounds of content. Other pro-censorship legislation such as the Official Secrets Act which was introduced in 1911, focused on controlling and censoring behaviour, while the various Cinematograph Acts allowed for censorship of material by local authorities due to cinema licensing provisions. By contrast, the VRA directly focused on censorship of content and access to this content.

In a different legislative review, Frank Sharman points out that the bill itself is 'complex and strangely arranged, almost as if it were designed to give one impression of what it was doing whilst actually doing something else.'²² He suggests that the eventual legislation which permits, 'complete prohibition on all videos particularly disliked by the BBFC or the Home Secretary is far cry from the originally stated aim of the campaign which was to protect sweet and innocent children from vicious filmmakers.'²³ These observations support Barker's views from 1984 about legislation which concealed hard-line censorship within a framework of moral concern.

This analysis of the legislation from a legal perspective highlights just how far the bill was influenced by broader social concerns rather than simply shaped by the need to regulate a new medium. While Parliament was seen to be broadly in sympathy with the objectives of the bill, both to protect children and to crackdown on the unregulated video industry, (particularly after being shown a film compiled of extracts from extreme videos), there were doubts about the BBFC taking over responsibility for video. Parliamentary memories are long and there were many who questioned the BBFC's capabilities and suitability for the job.

To this end, Sir Bernard Braine declared:

If the idea is that this should be vested in the British Board of Film Censors, the House should protest. That body's track record makes it totally unfitted for the task. It has passed some of the most offensive, sadistic and filthy material that one can imagine—for example, it passed the film "The Burning", which is now available in video form, which shows the mutilation of children by an adult sadist. It would be wholly wrong to entrust so important a task to such a body, and the sooner it is phased out altogether the better.²⁴

Labour MP Denis Howell agreed suggesting, 'I feel strongly that we need a statutory body and not the existing body, which has totally failed to protect the youth of the nation.'²⁵ As well as criticism of the past work of the BBFC from across the political spectrum, there was also some confusion expressed about how the VRA would work in practice and what it would mean from a legal perspective. The Conservative MP for Gravesham pondered this issue:

Ultimately, as the Williams committee on obscenity and film censorship suggested, the British Board of Film Censors must become some type of statutory body and serve as a greater form of insurance. This may not occur immediately. The British Board of Film Censors is a voluntary body set up by the film industry. After the passage of the

Bill, will not the Under-Secretary arrive at a curious marriage when he unites a voluntary body with a statutory body?²⁶

Michael Shersby, MP for Uxbridge, argued:

It is my opinion that the only effective way of resolving that problem in practice is for there to be two separate and distinct forms of censorship—one for video tapes and discs and one for films shown in cinemas under licensed conditions, thus reflecting the significant differences between the two media...Should we interfere with the working of the BBFC and a system of self-policing which works so well for the film industry? Might it perhaps be better to have a separate authority for video tapes operating classification standards which take account of the fact that, unlike the licensed cinema, the video-tapes are shown in the home to audiences of widely differing ages?²⁷

What is interesting here is that Shersby is positioning the two industries as separate entities, with different audiences which would operate in different viewing spaces. It is clear to see that along with some real anxieties about the BBFC's fitness and capability to assume responsibility for video, there is also a recognition that video is a different medium which need to be understood on its own merits and demerits.

Of course, a great deal of this opposition to the BBFC taking on the regulation of video can be seen as more general criticism of their decisions and of their anomalous position, which had been highlighted by the Williams Committee and which many in Parliament found to be unsatisfactory. As Robertson has documented, within a year the relationship between Mellor at the Home Office and Ferman at the BBFC would descend into a power struggle over the appointment of a new BBFC President, yet at this pivotal moment, Mellor rose to defend the BBFC to Parliament:

I must make it clear... that the obvious candidate to undertake the work of categorising videos into acceptable and widely understood categories, and of ensuring maximum correspondence between the categories familiar to cinema goers and those applicable to videos, is the British Board of Film Censors.²⁸

Mellor went on to defend the BBFC's history and record, declaring:

The Board has more than 70 years of experience in a complex and difficult area, and although inevitably it has not escaped criticism—even Ministers do not escape criticism—it has the necessary credibility and public confidence, as well as the experience and expertise, to take on the role of classifying video works in accordance with the Bill.²⁹

Of course, the reading of the bill which would become the VRA only offers an insight into the Parliamentary debate, but it does indicate that while there was a lot of anxiety about the

BBFC assuming new powers, the Home Office were firm in their public support of the Board. This more nuanced picture of stated objections and queries about legality does not indicate a wholehearted acceptance of the BBFC as an organisation, or as a body best suited to undertake this work. Instead a picture emerges of a BBFC in danger of becoming simply one of two organisations responsible for regulation of moving image, and increasingly redundant in a new mediatised age.

The BBFC position

It is important to remember that while the debates about the proposed VRA were taking place in Parliament, the BBFC were trying to maintain business as usual. In fact they had become embroiled in a number of high profile and difficult cases – not just of extreme nasty videos – but rather of films which required a high level of discussion and a great deal of measured attention. Notable examples from this period include Michael Winner's *Death Wish 2* (1981), and his remake of *The Wicked Lady* (1983) which caused a very public row between the director and the BBFC. There were also issues with the comic book violence contained within *Indiana Jones and The Temple of Doom* (1984), the violent adolescents in *Class of 1984* (1982) and the explicit drug abuse and prostitution in *Christiane F.* (1981)³⁰

Preoccupied with these cases, as well as internal discussions continuing on *The Evil Dead* (1982) *Driller Killer* (1979) and *I Spit on Your Grave* (1978) and obvious disagreements between examiners about the best way to treat these films, a BBFC memo written in early 1984 indicates the Board's increasing frustrations.³¹ This was less to do with the discussion over the possible introduction of the VRA, but rather what introducing the VRA would mean for the Board. Documentation suggests that the BBFC were frustrated firstly by the government's increased involvement in the organisation (an indication of things to come), and secondly the substantially increased workload which would be generated by the new legislation and not least, by its financial implications such as the need to recruit more staff.³²

The material from the Ferman papers reveals that unlike Parliament where the issue is the BBFC's fitness to take over this work, for the Board the key issue is the formal and legal designation of the BBFC as the statutory body responsible for classification of video. It is not simply that the organisation is to be designated but rather that named individuals - the Secretary, Under Secretary, President and Vice President - would be designated under the VRA as responsible for the actions of the BBFC. This means that those designated representatives of the BBFC could be called upon to defend the actions of the Board, and also could be held personally responsible for decisions made by the organisation and potentially prosecuted.

Such extreme scenarios may sound far-fetched but the BBFC was acutely aware that a few years previously the Independent Broadcasting Authority had been taken to court by Mary Whitehouse to see if they breached their statutory duties under the Broadcasting Act by showing *Scum* (1979) on television. There is note on the Ferman papers to this effect, so the BBFC were well aware of this possibility. Memories of the lengthy court cases for purported indecency in *Language of Love* (1970) and *Last Tango in Paris* (1972), as well as the

controversy over the violent and sexual content in *The Devils* (1971), *Straw Dogs* (1971) and *A Clockwork Orange* (1971) as well as the more recent religious clamour over *Life of Brian* (1979), would also have informed BBFC thinking.³³

Ferman in particular was very unhappy at the idea of individuals being personally responsible and their names presented to Parliament as part of the VRA. Private correspondence from June 1985 indicates that negotiations with the Home Office were so strained that Ferman was considering resigning in protest at government interference. Far from being pleased about the new powers on offer, the BBFC were becoming increasingly anxious about what this would mean and how much Government influence would increase. Yet Ferman's resignation at this crucial moment would only have weakened the BBFC position further. Examiner Margaret Ford, who would later become Deputy Director of the BBFC, wrote to Ferman that, 'to resign would be to play straight into their hands and leave your job open to ministerial appointment.'³⁴

A specific concern which appears not to have occurred to the Board is the notion of the BBFC being replaced as the designated authority if they failed to perform in the way expected of them by the Home Office. Lawyer Frank Sharman critiqued the VRA legislation in 1986 and cites section 4.4 of the Act which states that the Secretary of State 'may at any time designate another people in place of any person designated.' Sharman explains that this means:

Subject to the few restrictions imposed by administrative law this means that if the Home Secretary does not like the way the BBFC is censoring videos, he can dismiss them and appoint someone with views which accord more with his own.³⁵

He also points out the contradictory nature of the legislation by noting:

Those that decry the view that this is state censorship point out that the BBFC is an independent body, not a government department and it will be exercising powers given it by Statute. Those who think that this is state censorship point to the Home Secretary's virtually unlimited power of designation and redesignation.³⁶

This concern also spills over into some of the individual film files at the BBFC. One of the examiner's reports for Ken Russell's *Crimes of Passion* from 1984 makes reference to the 'political problem' of releasing this film uncut at the current time. He writes:

I do not feel that a few trims here and there will do much to mute the sleaze which may well offend a number of people... If controversy were to break just as designation was being considered and this film will be controversial and arouse a lot of hostile comment, we could not just put our hands on our hearts and offer 'artistic merit' as a defence for 18 uncut.³⁷

In the same month, another very different film file also sheds light on the state of affairs at the Board. A note from the hefty *Driller Killer* file from one of the younger, newer examiners also suggests:

With a number of cuts however, this film is suitable for release. However the notoriety of DK is such that even a completely sanitised release would, at this particularly delicate time, be extremely inadvisable. In my view, predictably enough, a decision to release this video should be postponed until after designation - whenever that might take place.³⁸

So here we can see an anxious BBFC concerned about how designation would affect them and the need at all costs to avoid bad publicity at this tricky time. A confidential and revealing BBFC memo from April 1985 from the Board administration to BBFC management, reveals that the organisation was acutely aware of the fragile nature of its position; a sharp contrast to the bullish correspondence and the entrenched position which it adopted in its dealings with the government. This document notes five key and explosive points:

1. The government had a manifesto commitment to bring in the Video Act. It has taken this through Parliament; it now has to be seen to implement the act before the next election – early enough for this to have started producing results.
2. It has announced publicly that the Board is to be the designated authority - and cannot back down from this without an outcry - unless the Board itself does something to make this impossible. The Board is highly reputable so their room for manoeuvre is limited – even if we assume that there a desire not to appoint the Board.
3. It would be difficult for the government to appoint another body because this must appear to be independent of government.
4. No government in this country could be seen to be imposing political censorship. It would be very anxious to avoid this accusation
5. While the government was prepared to work with Lord Harlech – and proposed designating the board when there was every prospect of his remaining in office for some years – it is possible that it would prefer to have a President more amenable to government pressures if the need ever arose.³⁹

This last point is most interesting as it suggests that were Harlech still leading the BBFC then the negotiations would be being shaped differently. Without him, the BBFC is vulnerable to Home Office interference. BBFC fears about increased government influence are borne out by the correspondence between Ferman and Mellor and, as Sharman highlights, by the legal

provisions of the Act which gave authority to the Home Office to actively question the BBFC's decisions.

Within their internal memos, the Board indicate how concerned they were for their own future noting the declining number of submitted film works and that without responsibility for video 'the BBFC could wither and die.'⁴⁰ Although slightly melodramatic, the marginalisation of the BBFC in favour of a different organisation to regulate video would surely have relegated the Board to the status of advisory body, and so it is hard not to see their concerns expressed here as legitimate and very real anxieties.

Moving forward at the BBFC

What emerges from the material in the Ferman papers is that despite protracted wrangling with the Home Office, the BBFC had been actively preparing to take over responsibility for the regulation of video in 1984. More significantly they also saw it as an important opportunity for the organisation to evolve and to assume an important role in a changing industry. But how was this to work in practice? To assume control over the regulation of the titles on the DPP's list of nasties was one thing, but to deal with the backlog of videos and to classify them according to new guidelines was a mammoth task. A BBFC file note estimates that there were approximately 58,000 film titles on the Department of Trade and Industry list at this moment, all of which could potentially be resubmitted for examination.

In a series of letters between the BBFC and the Home Office, Ferman makes it clear that the BBFC are aware of the challenges in taking on the backlog of already certificated films which would have to be re-examined for video. In a careful explanation of the BBFC's way of working (something which would now be required by the Home Office) Ferman explains how the task will be approached. He clarifies that 'all videos will be treated equally and charged on the basis of the measured running time of the initial viewing.'⁴¹ He proposes that videos will be charged on a minute by minute basis, that bona-fide charities and non-profit making organisations will pay greatly reduced fees, that subtitled videos in which the spoken language is not English will pay reduced fees and un-translated foreign language works imported for ethnic minorities will pay even less. Crucially for the film industry, he confirms, 'video works already classified by us on film will continue to be charged half the standard fee.'⁴²

Within this correspondence, there is also a discussion about the order in which the backlog should be tackled. Ferman suggests:

Our purpose in securing a reverse date order of priority was to encourage public confidence in the Act by bringing the criminal provisions into force for the nasties first of all. Failure to distinguish in some legally valid fashion between the 8,000 or so works in the backlog which are predominantly in English will inevitably lead to major delays in bringing the Act into force for those works it was designed primarily to stamp out."⁴³

This approach ensured that by agreeing to consider any 'extreme' videos which *had* been submitted for certification (and making a distinction between the films which had never been submitted to the Board for a certificate), the BBFC would be seen to be addressing public anxieties about these particular films rather than simply tackling the backlog in an ad-hoc fashion.

What is interesting is that in the passing of the VRA and the formal regulation of the video industry, the landscape has now shifted significantly. At the start of the decade it was easy to see the BBFC and the BVA as natural allies attempting to find solutions to circumnavigate state sanctioned censorship. However, following the introduction of the VRA, the BBFC have become the state-backed gatekeepers and have abandoned their former allies. In January 1985, a disgruntled BVA are writing to Mellor at the Home Office asking him to put pressure on the BBFC about their video policy. They are aggrieved that fees are being charged for the re-examination of films on video and argue:

It is our feeling that at the very least video of films with BBFC U certificates should normally be granted video certification in the same category without incurring the costs and delays of re-examination.⁴⁴

This may seem like a straightforward and reasonable request but the BBFC were not in a conciliatory mood. The BVA request was forwarded to BBFC, who were now in a position to refuse to bow to such pressure citing their new statutory powers. A rather triumphant reply notes:

The BVA's suggestion would not only contravene the spirit of the Act, but would also make possible the publishing, whether deliberately or inadvertently, of unacceptable material in video works which carry a classification certificate attesting their suitability for general release by persons of all ages.⁴⁵

They address the specificities of the request, which relates to U certificate films by explaining:

The likelihood of U films being distributed on video in a form different from that certificated for the cinema is greater than the BVA suggests. Were such discrepancies not to be considered in determining the video classification, the designated authority could be judged to be in breach of its duties under the Act. What our lawyers will not permit us to do is to shirk any responsibility laid on us by Parliament.'⁴⁶

Unlike challenges to their authority for film regulation, in the case of video the BBFC is on very firm ground indeed and are here happy to cite their new legal responsibilities as a justification for their approach and subsequent decisions.

Conclusion

This article has drawn on a range of material to explore the relationship between the Government and the BBFC at the time of the Video Recordings Act and the implications of the VRA for the BBFC. The archive material has demonstrated that the statutory powers for the BBFC granted in the VRA should not be seen as a *fait accompli* which Parliament was happy to endorse, nor as a slice of straightforward good fortune for the British Board of Film Censors. As with all power relations, it was much more complicated than an initial glance first suggests.

As Petley and Barker noted at the time, the debate about the video nasties and the introduction of the VRA was about far more than simply regulating a new medium or restricting access to horror videos. The right wing press and the moral right joined forces to push the legislation through Parliament and to bypass the negotiations taking place with the British Videogram Association. All of this was complicated by the concatenation of a number of additional factors; the election of a Conservative Government in 1979, the sidelining of the Williams Committee findings, a swing back to the political right, and the early death of Lord Harlech. Legal explorations of the VRA in subsequent years identify the hasty yet draconian nature of the legislation, lending credibility to contemporary claims made by Barker, Petley and others during the early 1980s.

The archival evidence from the James Ferman papers reveals how the BBFC worked to secure their own future and in doing so abandoned their allies within the fledging video industry to assume control of moving image regulation within Britain. The outcome of the VRA ensured that the BBFC remained at the forefront of classification and regulation, a remarkable achievement considering expressed Parliamentary concerns about their suitability for this role. Yet, assumption of new powers came at a price. As Robertson has documented, the BBFC would face increased government interference in their staff appointments and in their activities and this altered relationship set the tone for relations between successive governments and the BBFC. In the granting of statutory powers for video, the BBFC's position was strengthened, however as an organisation it remained anomalous as its power over films shown in cinemas remained advisory rather than formal. This paradox ensured that the BBFC was effectively making two different judgements on the same film, one for its cinema release, and another for its subsequent video release. As a trade-off for the newly accrued powers, the BBFC had to accept increased Home Office scrutiny and a government keen to involve itself discreetly in ongoing debates about censorship. It is arguable whether the position of the BBFC was improved or damaged by their assumption of formal powers. The machinations of the BBFC were made possible by the series of events explored above, but what is fascinating is the extent to which the debates articulated by the British Videogram Association pertaining to the role of parents, regulation within the home, the differing nature of video and film would continue to shape BBFC policy and approach for the decades which followed.

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¹ More recently, this Act was superseded by the Video Recordings Act 2010, which corrected a procedural error from the 1984 legislation but otherwise confirmed all the main provisions of the original act.

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- ² Barker, "Nasty Politics," 7.
- ³ Kuhn, "Letter to editor," 116-117.
- ⁴ Cmnd 7772. HMSO, 1979, 22.
- ⁵ Cmnd 7772. 158
- ⁶ Robertson, "Home Office and BBFC," 318.
- ⁷ Covered in detail in Barber, *Censoring the 1970s*
- ⁸ Robertson, "Home Office and BBFC," 318.
- ⁹ Michael Havers to Lord Harlech, 18 February 1981. James Ferman papers. BFI library.
- ¹⁰ Egan, *Trash or Treasure*, 1-15.
- ¹¹ Petley "A nasty story," 70. Also reproduced in Petley, *Film and Video Censorship in Modern Britain* along with other relevant publications relating to the VRA.
- ¹² Ibid.
- ¹³ Egan, *Trash or Treasure*, 1-15.
- ¹⁴ Petley "A nasty story," 72
- ¹⁵ Report of the Video Working Party. January 1983. James Ferman papers. BFI library.
- ¹⁶ Brown, "A curious arrangement," 23.
- ¹⁷ Ibid.
- ¹⁸ Ibid.
- ¹⁹ Ibid.
- ²⁰ Legislation covered in detail in Petley, *Film and Video Censorship in Modern Britain*.
- ²¹ Marsh, Gowin and Read "Private Members Bills," 183.
- ²² Sharman "Video Recordings Act," 114.
- ²³ Ibid. 117.
- ²⁴ Bernard Braine, House of Commons debate, 11 November 1983.
- ²⁵ Denis Howell, House of Commons debate, 11 November 1983.
- ²⁶ Tim Brinton, House of Commons debate, 11 November
- ²⁷ Michael Shersby, House of Commons debate, 11 November 1983.
- ²⁸ David Mellor, House of Commons debate, 11 November 1983.
- ²⁹ Ibid.
- ³⁰ See Lamberti, *Behind the Scenes at the BBFC*.
- ³¹ Dates given for these films correspond with their production dates and are included here for clarity, but their formal classification by the BBFC varies.
- ³² BBFC internal memo notes, 7 March 1985. James Ferman papers. BFI library.
- ³³ For more information on these cases see Barber, *Censoring the 1970s*
- ³⁴ Margaret Ford to James Ferman, 12 June 1985. James Ferman papers. BFI library.
- ³⁵ Sharman, "Video Recordings Act," 116
- ³⁶ Ibid.
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- ⁴⁰ Ibid.
- ⁴¹ James Ferman to Nigel Varney, 18 October 1984. James Ferman papers. BFI library.
- ⁴² Ibid.
- ⁴³ James Ferman authored BBFC position paper, 19 November 1984. James Ferman papers. BFI library.
- ⁴⁴ British Videogram Association to David Mellor, 25 January 1985. James Ferman papers. BFI library.
- ⁴⁵ BBFC to David Mellor, January 1985. James Ferman papers. BFI library.
- ⁴⁶ Ibid.